IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5951 of 2007()

LP.5/2007 of J.M.F.C.-II,THAMARASSERY

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CRIME NO.

PETITIONER/ACCUSED

SHAMSUDHEEN,S/O. MUHAMMED HAJI
THAROLTHAZHAM,OMASSERY,KOZHIKODE.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: OMPLAINANT

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE,
THIRUVAMBADY POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 5951 of 2007

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Dated this the 3rd day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations for offences punishable under Section 332 read with 149 IPC. Cognizance was taken. The petitioner had entered appearance and was enlarged on bail. Subsequently he started not appearing before the learned Magistrate and the learned Magistrate has issued coercive processes against the petitioner. The case has been transferred to the list of long pending cases also. The warrant of arrest issued against the petitioner is chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The absence of the petitioner earlier was on account of reasons beyond his control. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. The co-accused have already been tried, found not guilty and acquitted. The petitioner apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that appropriate directions under Section 438 and /482 Cr.P.C may be issued in favour of the petitioner.

3. The application is opposed by the learned Public Prosecutor . The learned Public Prosecutor only submits that the petitioner can surrender before the learned Magistrate and seek regular bail.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE